

LATRICE BASS,

Plaintiff,

v.

NANCY BERRYHILL,

Acting Commissioner of Social Security

Defendant.

Case No. [18-cv-04365-WHO](#)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGEMENT;  
REMANDING FOR FURTHER  
PROCEEDINGS**

Re: Dkt. Nos. 20, 23, 24

The parties have filed cross-motions for summary judgment in this Social Security appeal. Based upon my review of the parties' papers and the administrative record, I GRANT plaintiff Latrice Bass's motion, DENY defendant's motion, and remand for further proceedings consistent with this Order.

**BACKGROUND**

**I. PROCEDURAL HISTORY**

On April 8, 2014, Latrice Bass filed an application for Social Security Disability Insurance under Title II of the Social Security Act ("SSA"), and on April 30, 2014, an application for Supplemental Security Income under Title XVI of the SSA. Administrative Record ("AR") 42, 273–274. She claimed an initial onset of disability of November 9, 2000, based on diabetes, sleep apnea, issues with short term memory, panic attacks, high blood pressure, insomnia, and blisters on her hands and feet due to diabetes. AR 96, 108.

Bass's claims were denied initially and then denied again upon reconsideration. AR 146–149, 151–156. She requested a hearing before an Administrative Law Judge ("ALJ") and a continued hearing was held on May 16, 2017, with Bass and her attorney appearing. AR 70, 234.

1 At the continued hearing, Bass amended her alleged onset disability date to November 9, 2010.  
2 AR 72, 73.

3 The ALJ issued an unfavorable decision on June 22, 2017. Bass filed this action for  
4 judicial review pursuant to 42 U.S.C. sections 405(g) and 1383(c)(3) on July 18, 2018. AR 54.  
5 Now pending before me are the parties' cross-motions for summary judgement.

6 **II. MEDICAL HISTORY**

7 Bass claims that most of her impairments stem from several early life events. AR 489,  
8 490. While initially raised by her mother, during elementary school Bass was removed from her  
9 mother's care due to neglect and lived with her grandparents for a number of years. AR 490, 663.  
10 Bass had difficulty understanding why she could not live with her mother, becoming emotionally  
11 distraught when intermittent visits with her mother ended and going so far as to intentionally  
12 injure herself so that they could stay together. AR 663, 667. During her childhood, she was  
13 sexually abused by several older family members. AR 489, 490, 602, 663, 668. Bass claims she  
14 began to gain weight as a protective strategy against her abusers and she has been obese since  
15 childhood. AR 484, 489, 519. She experienced disruption and fighting at school, dropping out  
16 during the 11th grade. AR 490, 646, 663. She does not have a GED. AR 663.

17 **A. Treating Medical Provider Records**

18 **1. Physical Impairments**

19 Bass's weight gain led to several related health problems, and she was diagnosed with  
20 diabetes and obesity in late 2010, as well as hypertension. AR 395; see also AR 587-87 (primary  
21 care provider, West Oakland Health Center, listing her onset date for diabetes and obesity as  
22 March 28, 2013, and for hypertension as April 3, 2014). She claims her psychiatric symptoms  
23 increased as a result of her worsening health. AR 388. She has visited several providers and  
24 examiners for diagnoses and treatment of both her physical and mental ailments.

25 In March 2013, Bass established care at West Oakland Health Council ("West Oakland"),  
26 where she repeatedly saw a nurse practitioner Barbara Turner for her obesity, diabetes,  
27 hypertension, joint pain, and depression. AR 516. Up until that point, Bass had attempted to  
28 manage her diabetes with emergency room visits and diet and exercise, and self-discontinued her

medications because of the side effects. AR 464, 516. During her treatment at West Oakland from 2013 to 2017, Bass variously reported wrist, leg, back, and feet pain, as well as fatigue and weight fluctuations. AR 61 (May 2017), 516 (March 2013), 524 (August 2014), 527-529 (April 2014), 532 (May 2014), 608, 617 (December 2015). Bass also reported that she experienced back pain for many years, AR 617 (December 2015), and difficulty walking due to pain in her feet from neuropathy, which was also diagnosed as early as 2013 as related to her diabetes. AR 608 (December 2015). In May of 2015, Bass complained of experiencing hand and wrist pain, and was diagnosed with carpal tunnel. AR 535, 629-633. In May 2017, Plaintiff reported her hand pain occurs constantly and is worsening. AR 61. NP Turner noted swelling and weakness, and Plaintiff's inability to make a tight grip. *Id.* NP Turner's notes from July 2017 reference an X-ray which was positive for instability and a suggestion to wear wrist supports. AR 35.

Between October 2013 and October 2017, West Oakland Health Center prescribed Bass Enalapril, Hydrochlorothiazide, Amlodipine, Labetalol, Gabapentin, Naproxen, Promethazine, Metformin, Trazodone, and Zoloft, to treat her high blood pressure, pain, diabetes, insomnia, depression, and anxiety. AR 15–16, 25–26, 29–30, 36, 66–67, 520, 525, 528, 533, 538, 542, 546, 550, 582–583, 590–591, 611–615, 620–624, 626, 630, 635, 661. Bass was often “non-compliant” with her medicines (including her medications for diabetes), discontinuing them off and on sometimes due to their side effects, including diarrhea, fatigue, numbness, and flu-like symptoms. AR 79, 464, 516, 524, 594, 606, 625.

## 2. Mental Health Impairments

In April and May 2014 visits to West Oakland, Bass complained of significant sleep problems and insomnia, which NP Turner believed likely arose from her severe depression and anxiety disorder, and was worsened by her caffeine use, stress, and obesity. AR 526, 532, 536. Bass stated that it took her many hours to fall asleep, that she frequently woke up in the middle of the night, and that she is getting only three hours of sleep total in one night. AR 526, 532. In August 2014, she stated that she has felt depressed on and off for most of her life and that she had felt a consistent depression in the preceding two years. AR 489. She only began seeking continuous medical treatment for her mental illness in 2016. Her self-reports and opinion

1 evidence indicate that she was unable to seek consistent treatment for her mental health until 2016  
2 because of her depression, dislike for talking to others, and difficulty trusting others, coupled with  
3 a limited insight into the depth and nature of her psychological symptoms and the medical  
4 treatment necessary to treat them. AR 68, 553, 665.<sup>1</sup>

5 NP Turner referred Bass to psychotherapist Marike Seemann, LCSW, and Bass received  
6 treatment on March 9, 2016 at West Oakland. AR 603. Seemann stated that Bass was visiting for  
7 ongoing depression and anxiety, and that Bass feels like she isolates herself and has some  
8 difficulties accepting her part in her relationship issues. AR 602. Seemann described Bass as  
9 having “adjustment disorder with mixed disturb of emotions and conduct” but did not make  
10 additional recommendations or indicate a need for further evaluations. AR 603.

11 Bass visited Sausal Creek Outpatient Stabilization Clinic, a drop-in mental health clinic,  
12 for her psychiatric conditions on November 28, 2016. AR 638-650. At Sausal Creek, Bass  
13 reported experiencing depression, feeling paranoid, fatigue, an inability to eat, lack of motivation,  
14 isolating herself, irritability, hopelessness, worthlessness, and feeling easily agitated. AR 639,  
15 649. Sausal Creek’s examining psychiatrist observed Bass’s depressed mood and flat affect,  
16 diagnosed her with Major Depression, assigned her a GAF score of 55,<sup>2</sup> and prescribed her  
17 Wellbutrin and Trazadone. AR 641. On December 28, 2016, Bass returned to Sausal Creek,  
18 where the examining psychiatrist noted her to be depressed, closed off, and guarded. AR 643.

19 Through March 2017, she continued to visit West Oakland, and continued to report to NP  
20 Turner about her depression, feeling down and anxiety, feelings of hopelessness, lack of  
21 motivation, and her minimal interest or pleasure in doing things. AR 674-679. NP Turner noted

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22  
23 <sup>1</sup> As noted below, examining physician Ede Thomsen, Ph.D., concluded that Bass has a “history of  
24 poor judgement concerning attending psychotherapy and taking her medications consistently and  
25 as prescribed. AR 665 (April 2017 report). Specifically finding that Bass “has limited insight into  
the depth and nature of her psychological conditions/symptoms and the need for on-going medical  
treatment for her chronic medical conditions.” *Id.*

26 <sup>2</sup> “A GAF score is a rough estimate of an individual’s psychological, social, and occupational  
27 functioning used to reflect the individual’s need for treatment.” *Vargas v. Lambert*, 159 F.3d  
1161, 1164 n.2 (9th Cir. 1998). “[A] GAF score between 41 and 50 describes ‘serious symptoms’  
28 or ‘any serious impairment in social, occupational, or school functioning.’” *Garrison v. Colvin*,  
759 F.3d 995, 1002 n.4 (9th Cir. 2014) (quoting Diagnostic and Statistical Manual of Mental  
Disorders, 4th ed.).

1 that Bass was refuses “to go to psych – says she will go[]but does not.” AR 678. At that point  
2 Bass was prescribed Zoloft. *Id.*

3       **B. Examining Opinions**

4       Bass was referred by the SSA for a psychological consultative exam on August 23, 2014  
5 with Dr. Kyle Van Gaasbeek, Psy. D. AR 489. Her chief complaints were related to her  
6 depression and diabetes, but she also complained of her unsociability and stated her belief that she  
7 is unable to work because “her moods are unpredictable.” *Id.* Dr. Van Gaasbeek found that Bass  
8 was open, focused, alert, clear and cooperative in speaking, but also moody, dysphoric, and had  
9 reduced short term memory function. AR 489-492. Dr. Van Gaasbeek’s DSM-IV diagnosis  
10 determined Bass has diabetes and obesity, unemployment and financial tightness, major  
11 depressive disorder, and assigned her a GAF score of 50. *Id.* He stated that her depression was  
12 treatable, though she would be vulnerable to further episodes of depression in the future *Id.*

13       As a result of his consultation, Dr. Van Gaasbeek concluded that Bass had the following  
14 functional limitations:

15       The claimant’s ability to perform simple and repetitive tasks is unimpaired. Her  
16 ability to perform detailed and complex tasks is unimpaired. The claimant’s ability  
17 to accept instructions from supervisors is unimpaired. Her ability to interact with  
18 coworkers and the public is at least moderately impaired. The claimant’s ability to  
19 perform work activities on a consistent basis without special or additional  
20 instruction is unimpaired. The claimant’s ability to complete a normal workday  
without interruptions from a psychiatric condition is moderately substantially  
impaired. The claimant’s ability to deal with the usual stress encountered in the  
workplace is moderately to substantially impaired.

21 AR 492.

22       Bass was referred by social security for a second psychological consultative by Dr. Aparna  
23 Dixit, Pys.D on March 23, 2015. AR 556-558. Bass reported pain and balance problems in her  
24 knees, blisters on her hands and feet, sleep apnea, high blood pressure, and feelings of  
25 unproductivity and irritability. AR 556. She also reported experiencing panic attacks during  
26 which she felt dizzy and breathless. *Id.* Dr. Dixit noted that Bass presented with symptoms of  
27 depression, and that her mood was dysthymic and her affect was commensurate with her mood.  
28 AR 557. Dr. Dixit diagnosed Bass with Depressive Disorder NOS, assigning her a GAF score of

1       60. AR 558. Dr. Dixit stated that Bass would continue to have mild difficulty in remembering and  
2 carrying out complex instructions and dealing with the public, but that she was would have no  
3 difficulty interacting with coworkers and supervisors as “she was cooperative and pleasant” during  
4 the examination, that she was oriented, and that she had adequate insight and judgment. AR 557,  
5 558.

6                     Bass was also referred by the SSA to an internal medicine consultative exam on March 23,  
7 2015, with Dr. Farah Rana, M.D. AR 553-555. Bass reported experiencing long-standing  
8 depression for which she had never seen a psychiatrist or been treated. AR 553. Dr. Rana stated  
9 that Bass “presents with a history of Diabetes type 2, history of hypertension, morbid obesity, and  
10 reported history of depression” as her initial diagnostic impression. AR 554–555. She concluded  
11 that that Bass was limited to medium work in a functional capacity assessment, including the  
12 ability to stand and walk for six hours out of eight-hour days (with breaks), and carry 25 pounds  
13 frequently and 50 pounds occasionally. AR 554-555.

14                     Bass was referred by Bay Area Legal Aid for a psychological evaluation with Dr. Ede  
15 Thomsen, Ph.D., in April 2017. AR 662-673. Dr. Thomsen performed a clinical interview,  
16 psychological tests, and reviewed Bass’s treatment records from March 28, 2013, through January  
17 17, 2017. AR 665. Bass reported her anxieties, insomnia, and several other psychological  
18 ailments. AR 665, 667, 668. Dr. Thomsen observed Bass’s depressed and anxious mood, with  
19 restricted affect. AR 664. Dr. Thomsen opined that Bass’s psychiatric symptoms make it difficult  
20 for her to have consistent social supports as she isolates from others, has great difficulty trusting  
21 others, and is prone to feelings of paranoia, as shown in her medical records. AR 664. Dr.  
22 Thomsen stated that Bass evidenced memory impairment, and that her symptoms and ailments  
23 were exacerbated by a limited insight into the depth and nature of her psychological conditions  
24 and the need for ongoing medical treatment for her chronic medical conditions, poor judgment  
25 concerning attending psychotherapy and taking her medications consistently and as prescribed,  
26 and poor reasoning and problem solving abilities. AR 665, 668.

27                     Dr. Thomsen also found Bass has severe deficits in emotional functioning caused by her  
28 severe depression, anxiety, and PTSD. AR 667-668. She concluded that Bass experiences

1 difficulty effectively taking in, processing, and organizing information, adhering to/remembering  
2 work-like procedures and sustaining an ordinary routine, dealing with typical work stress  
3 effectively, working in collaboration with others or in close proximity to others or with customers,  
4 and adapting/responding to changes in a work setting. AR 669.

5 **C. Self-Reports**

6 At her hearing with the ALJ, Bass testified that she experiences fatigue and has to rest  
7 throughout the day. AR 80. Bass also testified that she tries to clean her apartment but must stop  
8 because she lacks the energy and motivation to continue. AR 80, 81, 85. She testified that she  
9 experiences pain which limit her ability to sit, stand, and use her hands. AR 79-80. Bass reported  
10 that she does not often leave the house if alone, other than to go to the corner store. AR 85.  
11 However, Bass does leave the house almost every day with her mother to run errands, who picks  
12 her up to get her out of the house. *Id.* Bass reported that that there are times that she does not  
13 even have the energy to get dressed, that she often does not cook, but rather microwaves finger  
14 foods, and that she shops “maybe 3 times a month on a good month.” AR 85, 341, 342.

15 Bass testified and has consistently reported that she cannot remember to follow through  
16 with medical appointments and that she often has problems remembering to take all of her  
17 medication. AR 35, 81-82, 87, 88. She has also consistently testified to and reported feeling  
18 isolating, paranoia, and difficulty getting along with and trusting others. AR 84, 346, 489–490,  
19 553, 639, 663–665, 669.

20 Bass has only held two jobs. She was a warehouse worker from 1996 to 1999, and then  
21 she was an in-home caretaker for her grandmother from 2002 to 2010. AR 286, 376. She stopped  
22 her caretaker role around the time she was diagnosed with diabetes; that condition caused several  
23 health complications and hospitalizations and she was unable to care for her grandmother (who  
24 died in 2013). AR 489.

25 **III. ALJ DECISION**

26 The ALJ utilized the five-step sequential evaluation to determine Bass’s disability claim.  
27 AR 43. At step one, the ALJ found that Bass met the insured status requirements of the Social  
28 Security Act through June 30, 2015. AR 44. Bass has not engaged in substantial gainful activity

1 since her amended alleged onset date, November 9, 2010. *Id.* At step two, the ALJ found that  
2 Bass suffers from the following severe impairments: obesity, Carpel Tunnel Syndrome, depressive  
3 disorder, and PTSD. *Id.* The ALJ did not identify Bass's diabetes or her hypertension as severe  
4 impairments because "the record reflects" that those conditions "are without complications,  
5 asymptomatic, and have caused no end organ damage or strokes." *Id.* The ALJ further explained  
6 Bass's diabetes was not considered severe because Bass was not compliant with her medications,  
7 refused to take educational diabetes classes, and preferred to control her diabetes with only  
8 exercise and emergency room visits. *Id.*

9 At step three, the ALJ concluded that Bass did not have an impairment or combination of  
10 impairments that met or equaled a listed impairment in 20 C.F.R Part 404, Subpart P, Appendix 1.  
11 AR 45. The ALJ specifically considered whether the claimant's obesity might alone be equivalent  
12 in severity to a listed condition, or if it could be combined with other impairments to meet a  
13 listing. AR 45. However, the ALJ relied on evidence that he believed showed that Bass is able to  
14 engage in various daily activities such as driving a car, shopping in stores, working in a hair salon,  
15 living on her own, and completing household chores, to conclude that her obesity did not cause  
16 limitations alone or in combination with her other impairments that reached the "listing-level  
17 significance." *Id.*

18 The ALJ also contends that Bass's mental impairments do meet or equal a listing under the  
19 "paragraph B" criteria, either alone or in combination with each other. AR 46. The ALJ  
20 concluded that Bass has some moderate and mild limitations, but none rose to the level of a listed  
21 impairment alone or in combination. In reaching that conclusion, the ALJ again cited evidence of  
22 Bass's daily activities (noting, in addition to the evidence of activities and abilities above, she also  
23 spends time with others playing cards and dominoes, spends time on the phone, she is able to drive  
24 a car, she is able to go out alone, and she goes out almost every day with her mother) as well. AR  
25 46-47. Finally, the ALJ concluded that because Bass has not received "continuous, intensive  
26 mental health treatment", she does not meet the "paragraph C" criteria. AR 47.

27 The ALJ then determined that Bass retained the residual functional capacity ("RFC") to  
28 perform medium work as defined in 20 C.F.R § 404.1567(c) and § 416.967(c) with the following

1 limitations:

2 Lift and carry 50 pounds occasionally and 25 pounds frequently; sit, stand, and/or  
3 walk for 6 hours each in an 8-hour workday; occasional fingering bilaterally;  
4 frequent climbing of ramps, stairs, ladders, ropes, and scaffolds; frequent stooping,  
5 kneeling, crouching, and crawling; limited to performing simple, routine tasks;  
limited to performing simple work-related decisions; and could occasionally  
interact with the public.

6 AR 48.

7 The ALJ first discounted Bass's reported limitations as inconsistent with the medical  
8 record. AR 48–49. He found that given the very conservative and sporadic treatment for her  
9 physical conditions from NP Turner, Bass's characterization as to the severity of physical pain and  
10 limitations were not supported. AR 48. The ALJ's characterized Bass's examination and  
11 consultation records for her physical conditions (her diabetes, obesity, sleep apnea, high blood  
12 pressure, blisters, CTS, and joint pain) as showing mostly normal or unremarkable results. AR 48–  
13 49.

14 With respect to her mental health impairments, the ALJ characterized her treatment as  
15 “minimal and rather new,” point out that as of March 2015 she denied any hospitalization from or  
16 treatment of her mental complaints. AR 49. Taken together, the ALJ determined that Bass’s  
17 treatment records “suggest that her mental complaints are not as continuous and limiting as  
18 alleged.” *Id.*

19 The ALJ concluded that although her impairments could reasonably be expected to cause  
20 the alleged symptoms, Bass’s statements and those of her friend Brandon Thompson concerning  
21 intensity, persistence, and limiting effects are “not entirely consistent with the medical and other  
22 evidence in the record and are consequently assigned little weight.” *Id.* The ALJ further found  
23 that the evidence regarding Bass’s daily life activities were not consistent with someone who  
24 alleges disabling pain and depression, and some of her conditions may be more “situational, and  
25 not medical, in nature.” *Id.*

26 Turning to what limitations Bass had on her ability to work as supported by the opinion  
27 evidence, the ALJ assigned great weight to the internal medicine consultative exam of Dr. Farah  
28 M. Rana, M.D. and the psychological consultative examination of Aparna Dixit, Psy. D. AR 50.

1 He assigned significant weight to the psychiatrist consultative examination of Kyle Van Gaasbeek,  
2 Psy. D, except the ALJ rejected Gaasbeek's assignment of a GAF score of 50 as inconsistent with  
3 the longitudinal record as a whole. *Id.* Though rejecting Dr. Van Gaasbeek's GAF score as  
4 inconsistent with the longitudinal record, the ALJ explained that his "RFC assessment sufficiently  
5 accounts for the moderate impairments Dr. Van Gaasbeek identified in light of the Plaintiff's  
6 medical records and her activities of daily living." AR 50. The ALJ also assigned little weight to  
7 the GAF score of 55 given by the examining psychiatrist at Sausal Creek, contending it was not  
8 based on a long treating relationship or accompanied by any explanation. *Id.*<sup>3</sup>

9 Finally, the ALJ assigned little weight to the April 19, 2017 opinion of Ede Thomsen,  
10 Ph.D., who assigned Bass a GAF score of 46 and opined that Bass had "marked limitations" in  
11 interacting appropriately with the public, and has marked and extreme impairments in many areas.  
12 AR 51-52. The ALJ's justified giving reduced weight to Dr. Thomsen because Thomsen's  
13 restrictive opinions were "overly reliant" on self-reports from Bass which are "not consistent with  
14 the evidence as a whole," were not based on a treating relationship, and were not consistent with  
15 the medical records as a whole. AR 51. For example, the ALJ noted that Bass informed  
16 Thomsen that she "really [doesn't] go anywhere because I really don't like to be around people,"  
17 but that statement was at odds with her self-reports that she often spends time with other playing  
18 cards and goes shopping in stores, and was inconsistent with her hearing testimony that she goes  
19 out almost every day with her mother. AR 52.

20 At Step Five, the ALJ found that Bass was not disabled pursuant to the Medical Vocational  
21 Guidelines because she could perform medium work as defined in 20 CFR 404.1567(c) and  
22 416.967(c) with the moderate limitations from her RFC. Based on this RFC, the ALJ found that  
23 Bass could not perform past relevant work but that there are jobs that exist in significant numbers  
24 in the national economy that Bass can perform. AR 52-53.

25  
26  
27 <sup>3</sup> The ALJ also assigned reduced weight to a number of opinions of non-examining sources,  
28 including State agency medical consultants Drs. J.R. Saphir, M.D. (2014), A. Nasrabadi, M.D.  
(2015), Patrice G. Solomon, Ph.D. (2014), and E. Aquino-Caro, M.D. (2015). AR 50-51. Each of  
those opinions found Bass to be less limited than the ALJ concluded she was.

## **LEGAL STANDARD**

## I. DISABILITY DETERMINATION

A claimant is “disabled” as defined by the Social Security Act if they are (1) “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months,” and (2) the impairment is “of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. §§ 1382c(a)(3)(A)-(B); *Hill v. Astrue*, 698 F.3d 1153, 1159 (9th Cir. 2012). To determine whether a claimant is disabled, an ALJ engages in a five-step sequential analysis as required under 20 C.F.R. § 404.1520(a)(4)(i)-(v).

In the first two steps of the evaluation, the claimant must establish that he or she (1) is not performing substantial gainful activity, and (2) is under a “severe” impairment. *Id.* § 416.920(a)(4)(i)-(ii). An impairment must have lasted or be expected to last 12 months in order to be considered severe. *Id.* § 416.909. In the third step, the claimant must establish that his or her impairment meets or medically equals a listed impairment described in the administrative regulations. *Id.* § 416.920(a)(4)(iii). If the claimant’s impairment does not meet or equal one of the listed impairments, before proceeding to the fourth step, the ALJ is to make a residual functional capacity determination based on all the evidence in the record; this determination is used to evaluate the claimant’s work capacity for steps four and five. *Id.* § 416.920(e). In step four, the claimant must establish that his or her impairment prevents the claimant from performing relevant work he or she did in the past. *Id.* § 416.920(a)(4)(iv). The claimant bears the burden to prove steps one through four, as “at all times, the burden is on the claimant to establish [his] entitlement to disability insurance benefits.” *Id.* (alterations in original). Once the claimant has established this *prima facie* case, the burden shifts to the Commissioner to show at the fifth step that the claimant is able to do other work, and that there are a significant number of jobs in the national economy that the claimant can do. *Id.* §§416.920(a)(4)(v),(g); 416.960(c).

1           **II. STANDARD OF REVIEW**

2           Under 42 U.S.C. §405(g), the court reviews the ALJ's decision to determine whether the  
3           ALJ's findings are supported by substantial evidence and free of legal error. *Smolen v. Chater*, 80  
4           F.3d 1273, 1279 (9th Cir. 1996); *DeLorme v. Sullivan*, 324 F.2d 841, 846 (9th Cr. 1991) (ALJ's  
5           disability determination must be supported by substantial evidence and based on the proper legal  
6           standards). Substantial evidence means "more than a mere scintilla," but less than a  
7           preponderance." *Saelee v. Chater*, 94 F.3d 520, 521-22 (9th Cir. 1996) quoting *Richardson v.*  
8           *Perales*, 402 U.S. 389, 401 (1971). Substantial evidence is "such relevant evidence as a  
9           reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 401  
10           (internal quotation marks and citation omitted).

11           The court must review the record as a whole and consider adverse as well as supporting  
12           evidence. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). Where evidence is  
13           susceptible to more than one rational interpretation, the ALJ's decision must be upheld. *Morgan*  
14           *v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). "However, a reviewing  
15           court must consider the entire record as a whole and may not affirm simply by isolating a 'specific  
16           quantum of supporting evidence.'" *Robbins*, 466 F.3d at 882 (quoting *Hammock v. Bowen*, 879  
17           F.2d 498, 501 (9th Cir. 1989)); *see also Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

18           **DISCUSSION**

19           Bass argues that the ALJ erred by: (i) not including diabetes among her severe  
20           impairments at Step Two of their disability analysis; (ii) improperly rejecting opinions of her  
21           treating and examining sources without clear and convincing or specific and legitimate reasons;  
22           (iii) failing to properly consider her obesity throughout the analysis; (iv) not providing clear and  
23           convincing reasons for rejecting her subjective statements; (v) using an RFC that was not  
24           supported by substantial evidence; and (vi) improperly relying on the Medical Vocational  
25           Guidelines despite her mental health limitations. The Commissioner opposes and moves for  
26           summary judgment, arguing that the ALJ's decision was adequately supported by substantial  
27           evidence.  
28

1           **I. STEP TWO ANALYSIS**

2           Bass first challenges the ALJ's Step Two determination that her diabetes was not a severe  
3 impairment. She argues that by failing to consider her diabetes as severe, and to consider her  
4 limitations from diabetes in combination with her obesity, the ALJ effectively ignored the  
5 resulting symptoms that impacted Bass's ability to work: "fatigue, pain in her legs, feet and back,  
6 diabetic neuropathy, joint pain throughout her body, insomnia, and blisters on her hands and feet."  
7 Pls Mot. at 10. Plaintiff points to her testimony in the record supporting that her fatigue, lack of  
8 strength, and pain (resulting from her diabetes combined with her obesity) limit her ability to sit  
9 and stand and perform daily life functions, and, therefore her ability to function in the workplace.  
10 *Id.* at 10-11.

11           The Commissioner responds that any failure to characterize diabetes as severe was  
12 immaterial to the outcome of this case, as the ALJ properly considered all of plaintiffs' medically-  
13 determinable limitations from any source in determining Bass's RFC. A mere failure of an ALJ to  
14 identify a condition as "severe" is not itself erroneous when the ALJ properly considers the  
15 limitations that flow from that condition in setting the RFC. *See Buck v. Berryhill*, 869 F.3d 1040,  
16 1049 (9th Cir. 2017) ("The RFC therefore should be exactly the same regardless of whether  
17 certain impairments are considered 'severe' or not. Here, all impairments were taken into account  
18 both times."). Therefore, as long as the ALJ considered all of Bass's impairments and the  
19 limitations that could be reasonably caused by those impairments, the failure to include diabetes as  
20 a severe impairment at Step Two was harmless. *Compare Buck*, 869 F.3d at 1049 with *Smolen v.*  
21 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (ALJ erred when he "ignored substantial and  
22 undisputed evidence of Smolen's other impairments and failed to consider how the combination of  
23 those impairments affected Smolen's ability to do basic work activities.").

24           Here, the ALJ *did consider* Bass's complaints of pain, fatigue, insomnia, and blisters that  
25 Bass contends result from her diabetes and obesity. AR 44-45. When addressing obesity  
26 specifically, the ALJ noted that it did not rise to the level of a listing impairment because of the  
27 evidence in the record of Bass's daily life activities indicated she could drive, go shopping, work  
28 in a hair salon, live on her own, and complete household chores (although Bass argues the ALJ

1 overstated the frequency, duration, and circumstances of these activities). The ALJ considered the  
2 insomnia as part of Bass's severe depression and PTSD. AR 44. When establishing the RFC, the  
3 ALJ again concluded that the "medical record is not consistent with [Bass's] reported limitations  
4 and symptoms" stemming from her physical impairments because Bass has received "very  
5 conservative, sporadic treatment from a nurse practitioner and has not been referred to any  
6 specialist for her obesity or CTS," or for any of her other physical impairments. AR 48. Whether  
7 the ALJ erred in considering Bass's treatments for her physical impairments as conservative and  
8 her limitations as inconsistent with her daily life activities will be addressed below.<sup>4</sup>

9 Even if the ALJ erred in failing to include diabetes at Step Two as a severe impairment,  
10 any error was harmless because the ALJ did consider and address *the symptoms and limitations*  
11 Bass attributed to her diabetes in combination with obesity.

## 12 **II. FAILURE TO CONSIDER OBESITY**

13 Somewhat similarly, Bass asserts that the ALJ erred in failing to properly consider the  
14 limitations caused by her obesity "throughout" the sequential disability analysis. Mot. at 17-18.  
15 As noted above, the ALJ did consider the evidence regarding Bass's treatments at West Oakland  
16 for her complaints that could reasonably have been caused by obesity (including hypertension and  
17 pain). In doing so, the ALJ considered the sporadic and conservative treatments Bass *had*  
18 *received* at West Oakland, and the lack of referrals to any specialists (other than for CTS and her  
19 mental health issues).

20 Bass alleges that the ALJ failed to consider medical records diagnosing her as morbidly  
21 obese, citing only one record (AR 517, showing a BMI of 49.2), and contends that the ALJ erred  
22 because the "record indicates that Plaintiff's obesity exacerbated her other impairments, the ALJ's  
23 analysis is not sufficient." Pls. Mot. at 18. But Bass cites no evidence of functional limitations  
24 due to her obesity that "would have impacted the ALJ's analysis" that the ALJ did not consider.  
25

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26 <sup>4</sup> Bass criticizes the Commissioner for pointing to "outdated" evidence that her physical  
27 examinations were unremarkable. Reply at 6. But she does not point to any medical treatment  
28 records, tests, or opinion evidence substantiating her claims that her pain or fatigue resulting from  
her diabetes and obesity *are* substantially limiting despite treatment, much less that such evidence  
was ignored or mischaracterized by the ALJ.

1       Compare *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005) (rejecting error where, “[e]ven on  
2 appeal, Burch has not pointed to any evidence of functional limitations due to obesity which  
3 would have impacted the ALJ’s analysis. In fact, the only evidence in the record relating to her  
4 obesity are notes from doctors who observed weight gain, indicated that Burch is obese, and  
5 recommended that she participate in a medically supervised weight loss program.”); with *Celaya*  
6 *v. Halter*, 332 F.3d 1177, 1182 (9th Cir. 2003) (“The ALJ was responsible for determining the  
7 effect of Celaya’s obesity upon her other impairments, and its effect on her ability to work and  
8 general health, given the presence of those impairments. Defendant admits that the ALJ did not do  
9 so, even implicitly.”).

10       The ALJ considered Bass’s complaints of pain, fatigue and other symptoms that could  
11 reasonably be caused by her obesity (in or not in connection to her diabetes) and concluded that  
12 her treatments for those symptoms were conservative and sporadic. She cites no evidence, other  
13 than subjective complaints, that indicate functional limitations related to her obesity that the ALJ  
14 should have considered but did not.

15       **III. TREATING AND EXAMINING SOURCE OPINIONS**

16       Bass argues that ALJ improperly dismissed and gave reduced weight to the findings and  
17 limitations of her treating and the examining sources, including, Dr. Kyle Van Gaasbeek, Psy. D,  
18 Ede Thomsen, Ph.D, the psychiatrist at Sausal Creek, and her medical providers at West Oakland  
19 Health Council. The Commissioner contends that the ALJ’s findings are supported by substantial  
20 evidence and that proper weight and evaluation were given to the findings of those sources.

21       **A. WEST OAKLAND HEALTH CENTER**

22       Bass contends that the ALJ “improperly and implicitly” rejected the “opinions” of her  
23 “treatment team” at West Oakland Health Center. Indeed, the only time the ALJ specifically  
24 noted Bass’s records from West Oakland was when the ALJ noted that Bass had only received  
25 conservative and sporadic treatment for her diagnosed conditions (including diabetes,  
26 hypertension, pain, blisters and rashes) at West Oakland. AR 48.

27       But as noted above, the ALJ did consider Bass’s treatment records. Nowhere in those  
28 treatment records are any opinions (from NP Turner other anyone else) about how the symptoms

1 for which she received treatment limited Bass’s daily life activities or ability to work. Other than  
2 citing to portions of the West Oakland treatment records that show what is undisputed – that Bass  
3 complained of and sought treatment for her diabetes, hypertension, pain, fatigue, insomnia, and  
4 other medical issues – she does not point to any opinion evidence or medical records that were  
5 ignored or mischaracterized by the ALJ. The ALJ did not err with respect to the West Oakland  
6 records.

7       **B. DR. VAN GAASBEEK**

8       Bass asserts that the ALJ implicitly rejected key portions of Dr. Van Gaasbeek’s opinion,  
9 despite purporting to give them “great weight,” by failing to account for the limitations Gaasbeek  
10 found in the ALJ’s RFC. Gaasbeek concluded that Bass’s “ability to interact with coworkers and  
11 the public is at least moderately impaired,” her “ability to maintain regular attendance in the  
12 workplace is moderately impaired,” her “ability to complete a normal workday without  
13 interruptions from a psychiatric condition is moderately [to] substantially impaired,” and her  
14 ability “to deal with the usual stress encountered in the workplace is moderately to substantially  
15 impaired.” AR 492. The ALJ assigned significant weight to Gaasbeek’s opinions, but found that  
16 the RFC “sufficiently accounts for the moderate impairments” found by Gaasbeek “in light of the  
17 claimant’s medical records and her activities of daily living.” AR 50.

18       The Commissioner argues that the ALJ did not err because the ALJ’s RFC finding for  
19 “simple, routine and unskilled work with only occasional interaction with the public  
20 accommodated those limitations.” Cross-Mot. at 4. The Commissioner points out that unskilled  
21 work, deals primarily with objects rather than people and that in *Hoopai v. Astrue*, 499 F.3d 1071,  
22 1077 (9th Cir. 2007), the court affirmed an ALJ decision that, despite finding “moderate”  
23 limitations in a claimant’s “ability to complete a normal workday and workweek without an  
24 interruption from psychologically-based symptoms and to perform at a consistent pace without an  
25 unreasonable number and length of rest periods,” the claimant could nonetheless perform various  
26 low skilled jobs. *Id.* at 1075-77.

27       In *Hoopai*, the “functional limitations of the claimant’s depression on his activities of daily  
28 living and maintaining social functioning were mild,” while the “limitations were moderate on his

1 ability to maintain concentration, persistence and pace.” *Hoopai*, 499 F.3d at 1077. Here,  
2 however, Gaasbeek found “moderate to severe” limitations (not just moderate ones) in at least two  
3 functional categories (the ability to complete a normal workday without interruptions from a  
4 psychiatric condition and the ability to deal with the usual stress encountered in the workplace).  
5 The distinguishing factors in *Hoopai* are not present. It does not appear that the ALJ adequately  
6 took into account all of Gaasbeek’s moderate to severe limitations in the RFC despite the claim  
7 that he did.<sup>5</sup> The ALJ, erred in failing to address the moderate to severe limitations assessed by  
8 Gaasbeek that were accepted and not disputed by the ALJ.<sup>6</sup>

9 **C. EDE THOMSEN, PH.D**

10 Bass also asserts that the ALJ erred by “affording little weight” to the opinion of  
11 consulting examiner Dr. Ede Thomsen. Thomsen evaluated Bass in April 2017, ran diagnostic  
12 tests, and reviewed her medical records. AR 662-670. Thomsen concluded that Bass’s activities  
13 of daily living were “severely compromised” based on self-reports by Bass but also on  
14 information gleaned from the medical records (in particular, information regarding Bass’s inability  
15 to stay compliant with her medications and appointments), has poor judgment, and difficulty  
16 processing and organizing information. AR 668-669. Thomsen opined that Bass would have  
17 serve limitations in social functioning; moderate limitations with judgment/insight; marked  
18 limitations in interacting with the public, accepting instructions, and responding appropriately to  
19 changes in a normal work day; and extreme limitations in her ability to complete a normal work  
20 day or week without interruptions from psychologically based symptoms and in maintaining  
21 regular attendance at work. AR 672-73.

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22  
23 <sup>5</sup> Bass also challenges the ALJ’s reliance on the vocational “grids” instead of on the testimony  
24 from the vocational expert at the hearing, arguing that the grids fail to address the “moderate to  
25 severe” limitations found by Gaasbeek that were not disputed by the ALJ. Because the ALJ failed  
to adequately address or account for the Gaasbeek limitations, I do not separately address the  
ALJ’s reliance on the grids.

26 <sup>6</sup> In her opening brief, but not addressed further in Reply, Bass contends that the ALJ erred in  
27 assigning “little weight” to the 55 GAF score assessed by an “illegible psychiatrist” at Sausal  
Creek Outpatient Stabilization Clinic, because that assessment was not based on a long treating  
28 relationship or accompanied by any explanation. AR 51; Pls Mot. at 16-17. Bass does not explain  
how this rejection was either erroneous or otherwise impacted the ALJ’s RFC or other  
determinations during the sequential analysis.

The ALJ discounted Thomsen's conclusions because they were overly-reliant on Bass's self-reports, not based on a treating relationship, and not consistent with the record as a whole considering Bass's self-reports to the Administration about her daily life activities.

The Ninth Circuit has held that, given the nature of psychiatry, “[d]iagnoses will always depend in part on the patient’s self-report,” and that “the rule allowing an ALJ to reject opinions based on self-reports does not apply in the same manner to opinions regarding mental illness.” *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017). Therefore, in this context, a psychiatrist’s reliance on self-reported symptoms is not a sufficient reason to reject his or her opinion. *Id.* Here too, part of Thomsen’s opinions were based on Bass’s self-reports, but they were supported by Thomsen’s other clinical assessments and based, in part, on a review of Bass’s treatment records.

At base, the ALJ discounted Thomsen's opinions of Bass's limitations because the ALJ believed that Bass had repeatedly admitted to the Social Security Administration and in the ALJ hearing that she had greater functional capacity in terms of dealing with the public than Bass admitted to Thomsen. The ALJ noted that Bass told the ALJ that "often spends time with others playing cards," goes shopping in stores, and runs errands with her mother almost every day, as opposed to rarely wanting to be around people and not feeling up to running errands. AR 52. However, the ALJ ignored that Bass has consistently reported she has difficulty being around people, isolates herself, and generally only goes places when she has to and with her mother (unless it is the corner store). AR 84, 85, 342-343, 489, 490, 553. Bass further points out that the ALJ mischaracterized her daily activities. For example, the ALJ wrote that Bass "often" spends time with others playing cards and dominoes. In fact, she reported doing this only once a week and it is unclear with whom (AR 343), and that while she goes out almost every day with her mother to run errands, that is only because her mother forces her to run errands with her. AR 85.

The ALJ's discounting of Thomsen's opinions and limitations, in significant part by mischaracterizing the frequency and significance of Bass's admitted daily life activities, was erroneous.

## CONCLUSION

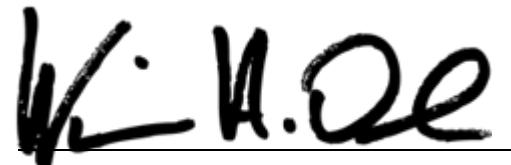
Because I have found that the ALJ erred in the treatment of the Gaasbeek and Thomsen

1      opinions, in significant part by mischaracterizing some of the evidence of Bass's daily life  
2      activities, the matter will be remanded. I do not need to reach whether the ALJ also erred in  
3      discounting Bass's other subjective statements, determining the RFC, and ignoring the vocational  
4      expert testimony in favor of the grids. Those arguments, however, have some merit given the  
5      ALJ's failures identified in this Order. However, because the merits of this case will not be clear  
6      until the ALJ properly weighs and considers the opinions of Gaasbeek and Thomsen and whether  
7      Bass's more consistent treatment of her mental health impairments might diminish her limitations,  
8      remand is necessary.

9                  For the reasons above, I GRANT Bass' motion for summary judgement, DENY  
10     defendant's motion for summary judgment, and REMAND the case for further proceedings  
11     consistent with this Order.

12                  **IT IS SO ORDERED.**

13     Dated: September 30, 2019



14  
15                  William H. Orrick  
16                  United States District Judge

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